

The Ontario Securities Commission

# OSC Bulletin

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The Ontario Securities Commission exercises its regulatory oversight function through the administration and enforcement of Ontario's *Securities Act* (R.S.O. 1990, c. S.5) and *Commodity Futures Act* (R.S.O. 1990, c. C.20), and administration of certain provisions of the *Business Corporations Act* (R.S.O. 1990, c. B.16).

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# Table of Contents

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<b>A.</b>	<b>Capital Markets Tribunal</b> .....	<b>6905</b>
<b>A.1</b>	<b>Notices of Hearing</b> .....	<b>(nil)</b>
<b>A.2</b>	<b>Other Notices</b> .....	<b>6905</b>
A.2.1	Jiubin Feng and CIM International Group Inc.....	6905
A.2.2	Cormark Securities Inc. et al. ....	6905
<b>A.3</b>	<b>Orders</b> .....	<b>6907</b>
A.3.1	Cormark Securities Inc. et al. ....	6907
<b>A.4</b>	<b>Reasons and Decisions</b> .....	<b>(nil)</b>
<b>B.</b>	<b>Ontario Securities Commission</b> .....	<b>6909</b>
<b>B.1</b>	<b>Notices</b> .....	<b>(nil)</b>
<b>B.2</b>	<b>Orders</b> .....	<b>6909</b>
B.2.1	PenderFund Capital Management Ltd. et al.....	6909
<b>B.3</b>	<b>Reasons and Decisions</b> .....	<b>6911</b>
B.3.1	Brownstone Asset Management Inc.....	6911
B.3.2	Tralucet Asset Management Inc. ....	6915
<b>B.4</b>	<b>Cease Trading Orders</b> .....	<b>6921</b>
B.4.1	Temporary, Permanent & Rescinding Issuer Cease Trading Orders .....	6921
B.4.2	Temporary, Permanent & Rescinding Management Cease Trading Orders .....	6921
B.4.3	Outstanding Management & Insider Cease Trading Orders.....	6921
<b>B.5</b>	<b>Rules and Policies</b> .....	<b>(nil)</b>
<b>B.6</b>	<b>Request for Comments</b> .....	<b>(nil)</b>
<b>B.7</b>	<b>Insider Reporting</b> .....	<b>6923</b>
<b>B.8</b>	<b>Legislation</b> .....	<b>(nil)</b>
<b>B.9</b>	<b>IPOs, New Issues and Secondary     Financings</b> .....	<b>7015</b>
<b>B.10</b>	<b>Registrations</b> .....	<b>7019</b>
B.10.1	Registrants .....	7019
<b>B.11</b>	<b>CIRO, Marketplaces, Clearing Agencies     and Trade Repositories</b> .....	<b>(nil)</b>
B.11.1	CIRO .....	(nil)
B.11.2	Marketplaces.....	(nil)
B.11.3	Clearing Agencies .....	(nil)
B.11.4	Trade Repositories.....	(nil)
<b>B.12</b>	<b>Other Information</b> .....	<b>(nil)</b>
<b>Index</b>	.....	<b>7021</b>



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# A. Capital Markets Tribunal

## A.2 Other Notices

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### A.2.1 Jiubin Feng and CIM International Group Inc.

**FOR IMMEDIATE RELEASE**  
August 16, 2023

**JIUBIN FENG AND  
CIM INTERNATIONAL GROUP INC.,  
File No. 2021-27**

**TORONTO** – Take notice that the sanctions and costs hearing in the above named matter scheduled to be heard on August 17, 2023 at 20 Queen Street West, 17<sup>th</sup> Floor, Toronto, Ontario, will instead proceed by videoconference.

Registrar, Governance & Tribunal Secretariat  
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### A.2.2 Cormark Securities Inc. et al.

**FOR IMMEDIATE RELEASE**  
August 22, 2023

**CORMARK SECURITIES INC.,  
WILLIAM JEFFREY KENNEDY,  
MARC JUDAH BISTRICER, AND  
SALINE INVESTMENTS LTD.,  
File No. 2022-24**

**TORONTO** – The Tribunal issued an Order in the above-named matter.

A copy of the Order dated August 22, 2023 is available at [capitalmarketstribunal.ca](https://capitalmarketstribunal.ca).

Registrar, Governance & Tribunal Secretariat  
Ontario Securities Commission

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# A.3 Orders

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A.3.1 Cormark Securities Inc. et al.

IN THE MATTER OF  
CORMARK SECURITIES INC.,  
WILLIAM JEFFREY KENNEDY,  
MARC JUDAH BISTRICER, AND  
SALINE INVESTMENTS LTD.

File No. 2022-24

**Adjudicators:** M. Cecilia Williams (chair of the panel)

August 22, 2023

## ORDER

**WHEREAS** on June 28, 2023, the Capital Markets Tribunal requested that the parties provide available dates for the hearing on the merits in this proceeding;

**ON READING** the submissions of the representatives for Staff of the Ontario Securities Commission and for each of the respondents;

**IT IS ORDERED THAT** the merits hearing shall take place on March 25, 2024 at 10:00 a.m., at the Capital Markets Tribunal located at 20 Queen Street West, 17<sup>th</sup> Floor, Toronto, Ontario, and continue on March 26, 27, and 28, 2024, April 11, 12, 15, 16, 17, 22, 23, 24, 25, and 30, 2024, May 1, 2, 3, 21, 22, 28, 29, 30, and 31, 2024, and June 3, 4, 5, and 6, 2024, or on such other date and time as may be agreed to by the parties and set by the Governance & Tribunal Secretariat.

“M. Cecilia Williams”

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# B. Ontario Securities Commission

## B.2 Orders

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### B.2.1 PenderFund Capital Management Ltd. et al.

#### Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – The issuer ceased to be a reporting issuer under securities legislation.

Multilateral Instrument 11-102 Passport System and National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – Securities Act s. 88 Cease to be a reporting issuer in BC – The securities of the issuer are beneficially owned by not more than 50 persons and are not traded through any exchange or market – The issuer is not an OTC reporting issuer; the securities of the issuer are beneficially owned by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders worldwide; no securities of the issuer are traded on a market in Canada or another country; the issuer is not in default of securities legislation.

#### Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10)(a)(ii).  
Securities Act, R.S.B.C. 1996, c. 418, s. 88.

**Citation:** *Re PenderFund Capital Management Ltd.*, 2023 BCSECCOM 397

July 18, 2023

IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
BRITISH COLUMBIA AND  
ONTARIO  
(the Jurisdictions)

AND

IN THE MATTER OF  
THE PROCESS FOR CEASE TO BE A  
REPORTING ISSUER APPLICATIONS

AND

IN THE MATTER OF  
PENDERFUND CAPITAL MANAGEMENT LTD.  
(the Filer)

AND

PENDER STRATEGIC GROWTH AND INCOME FUND

AND

PENDER GLOBAL FOCUSED FUND  
(the Funds)

## ORDER

### Background

¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for an order under the securities legislation of the Jurisdictions (the Legislation) that the Funds have ceased to be reporting issuers in all jurisdictions of Canada in which the Funds are reporting issuers (the Order Sought).

Under the Process for Cease to be a Reporting Issuer Application (for a dual application):

- (a) the British Columbia Securities Commission is the principal regulator the application;
- (b) the Filer has provided notice that subsection 4C.5(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island, Quebec, Saskatchewan, Nunavut, Yukon and Northwest Territories; and
- (c) this order is the order of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

### Interpretation

¶ 2 Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this order, unless otherwise defined.

### Representations

¶ 3 This order is based on the following facts represented by the Filer:

1. neither of the Funds is an OTC reporting issuer under Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*;
2. the outstanding securities of the Funds, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 security holders in each of the jurisdictions of Canada and fewer than 51 security holders in total worldwide;
3. no securities of the Funds, including debt securities, are traded in Canada or another country on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported;
4. the Filer is applying for an order that the Funds have ceased to be reporting issuers in all of the jurisdictions of Canada in which they are reporting issuers; and
5. the Funds are not in default of securities legislation in any jurisdiction.

### Order

¶ 4 Each of the Decision Makers is satisfied that the order meets the test set out in the Legislation for the Decision Maker to make the order.

The decision of the Decision Makers under the Legislation is that the Order Sought is granted.

“Noreen Bent”  
Chief, Corporate Finance Legal Services  
British Columbia Securities Commission

## B.3 Reasons and Decisions

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### B.3.1 Brownstone Asset Management Inc.

#### Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from subparagraphs 13.5(2)(b)(ii) and (iii) of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations to permit in specie subscriptions by a managed account in relation to a pooled fund.

#### Applicable Legislative Provisions

National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 13.5(2)(b)(ii)–(iii) and 15.1.

**Citation:** *Re Brownstone Asset Management Inc.*, 2023 ABASC 121

July 20, 2023

**IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
ALBERTA,  
BRITISH COLUMBIA,  
NOVA SCOTIA AND  
ONTARIO  
(the Jurisdictions)**

**AND**

**IN THE MATTER OF  
THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS  
IN MULTIPLE JURISDICTIONS**

**AND**

**IN THE MATTER OF  
BROWNSTONE ASSET MANAGEMENT INC.  
(the Filer)**

**DECISION**

#### Background

The securities regulatory authority or regulator in each of the Jurisdictions (each, a **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) granting an exemption from the prohibitions contained in sections 13.5(2)(b)(ii) and (iii) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) to permit *In specie* subscriptions by a Managed Account (as defined below) for Fund Securities (as defined below) (each subscription, an **In Specie Transfer**, as more fully defined below) (the **Exemption Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application):

- (a) the Alberta Securities Commission is the principal regulator for this application;
- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia and Nova Scotia; and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

### Interpretation

1. Terms defined in MI 11-102, National Instrument 14-101 *Definitions* and NI 31-103 have the same meaning if used in this decision, unless otherwise defined. The following terms have the following respective meanings
  - (a) **Clients** means individuals, private holding companies, pension plans, endowments, trusts, insurance companies, corporations, mutual funds and other entities to whom the Filer offers, or may offer, discretionary portfolio management services through a Managed Account;
  - (b) **Discretionary Management Agreement** means a written agreement between the Filer and a Client seeking discretionary portfolio management or related services;
  - (c) **Existing Pooled Funds** means each existing investment fund that is
    - (i) not a reporting issuer,
    - (ii) the securities of which are sold solely to investors in Canada through private placements pursuant to exemptions from the prospectus requirement, and
    - (iii) for which the Filer acts as investment fund manager and portfolio adviser;
  - (d) **Funds** means collectively, the Existing Pooled Funds and the Future Pooled Funds;
  - (e) **Fund Securities** means units or shares of any of the Funds;
  - (f) **Future Pooled Funds** means any investment fund that the Filer sets up in the future that
    - (i) will not be a reporting issuer,
    - (ii) the securities of which will be sold solely to investors in Canada through private placements pursuant to exemptions from the prospectus requirement, and
    - (iii) for which the Filer will act as investment fund manager and portfolio adviser;
  - (g) **In Specie Transfer** means a subscription/purchase by a Managed Account of Fund Securities using securities held in the Managed Account as consideration; and
  - (h) **Managed Account** means an account managed by the Filer for a Client that is not a responsible person and over which the Filer has discretionary authority.

### Representations

This decision is based on the following facts represented by the Filer:

#### The Filer

1. The Filer is a corporation existing under the laws of Alberta, with its head office in Calgary, Alberta.
2. The Filer is registered in:
  - (a) Alberta, Ontario, British Columbia and Nova Scotia as an adviser in the category of portfolio manager;
  - (b) Alberta and Ontario as an investment fund manager; and
  - (c) Alberta, Ontario, British Columbia and Nova Scotia as an exempt market dealer.
3. The Filer is not a reporting issuer in any province or territory of Canada and is not in default of securities legislation in any province or territory of Canada.

#### The Funds

4. Each of the Funds is, or will be, organized as a limited partnership, a corporation or a trust established under the laws of Alberta, Ontario or another province or territory of Canada.
5. Each Fund is not, or will not be, a reporting issuer under the laws of any province or territory of Canada.
6. The Existing Pooled Funds are not in default of securities legislation in any province or territory of Canada.

### **The Managed Accounts**

7. The Filer offers discretionary portfolio management services to Clients seeking wealth management or related services under Discretionary Management Agreements.
8. Pursuant to the Discretionary Management Agreement entered into with each Client, the Client appoints the Filer to act as portfolio adviser in connection with an investment portfolio held in a Managed Account of the Client with full discretionary authority to trade in securities for the Managed Account without obtaining the specific consent or instructions of the Client to execute the trade.
9. The Filer may, where authorized under the applicable Discretionary Management Agreement, from time to time, invest the assets in a Client's Managed Account in securities of any one or more of the Funds in order to give such Client the benefit of assets in a model portfolio and economies of scale regarding minimum commission charges on portfolio trades, and generally to facilitate portfolio management.

### ***In Specie Transfers***

10. The Filer may wish to deliver portfolio securities held in a Managed Account to a Fund to facilitate an *In Specie* Transfer. As the Filer is a registered adviser and is, or will be, the portfolio adviser of the Funds and the Managed Accounts when an *In Specie* Transfer is executed, the Filer would be considered a 'responsible person' as defined in NI 31-103 in respect of such Funds and Managed Accounts.
11. As the Filer is, or may be, the trustee of a Fund which is organized as a trust, each such Fund may be an 'associate' of the Filer, and accordingly, absent the grant of the Exemption Sought, the Filer may be precluded by section 13.5(2)(b)(ii) of NI 31-103 from effecting *In Specie* Transfers. As the Filer is, or will be, the manager and portfolio adviser of the Funds, absent the grant of the Exemption Sought, the Filer may be precluded by section 13.5(2)(b)(iii) of NI 31-103 from effecting *In Specie* Transfers.
12. Prior to engaging in *In Specie* Transfers on behalf of a Managed Account, each Discretionary Management Agreement or other documentation will contain the authorization of the Client for the Filer, as portfolio adviser of the Managed Account, to engage in *In Specie* Transfers.
13. The only cost which will be incurred by a Managed Account or a Fund for an *In Specie* Transfer is a nominal administrative charge levied by the custodian of the relevant Fund for recording the trades and any commission charged by the dealer executing the trade.
14. The Filer, as manager of the Funds, will value the securities transferred under an *In Specie* Transfer on the same valuation day on which the purchase price of the Fund Securities is determined. With respect to the purchase of Fund Securities, the securities transferred to a Fund for an *In Specie* Transfer in satisfaction of the purchase price of those Fund Securities will be valued at the end of day closing price posted on the exchange in which the security is listed, as if the securities were portfolio assets of the Fund.
15. None of the securities involved in the *In Specie* Transfers will be considered an "illiquid asset," as defined in National Instrument 81-102 Investment Funds (**NI 81-102**).
16. *In Specie* Transfers will be subject to
  - (a) compliance with the written policies and procedures of the Filer respecting *In Specie* Transfers that are consistent with applicable securities legislation, and
  - (b) the oversight of the Chief Compliance Officer of the Filer to ensure that the transaction represents the business judgment of the Filer acting in its discretionary capacity with respect to the Fund and the Managed Account, uninfluenced by considerations other than the best interests of the Fund and Managed Account.

### **Decision**

The Decision Maker is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Maker under the Legislation is that the Exemption Sought is granted provided that:

17. The Filer obtains prior written consent from the Client of the Managed Account, specifically for any contemplated *In Specie* Transfers, before it engages in any *In Specie* Transfer in reliance on this exemptive relief order;
18. The Fund would, at the time of payment, be permitted to purchase the securities held by the Managed Account that are intended as consideration for the *In Specie* Transfer;

### B.3: Reasons and Decisions

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19. The portfolio securities intended as consideration for the *In Specie* Transfer are acceptable to the Filer, as portfolio adviser of the Fund, and consistent with the Fund's investment objectives;
20. The value of the portfolio securities sold to the Fund for the purpose of the *In Specie* Transfer is equal to the issue price of the Fund Securities for which they are used as payment, valued as if the securities were portfolio assets of that Fund;
21. None of the securities involved in the *In Specie* Transfers will be considered an "illiquid asset," as defined in NI 81-102.
22. The account statement next prepared for the Managed Account will include a note describing the *In Specie* Transfer, the securities delivered to the Fund, and the value assigned to such securities; and
23. Each Funds keeps written records of all *In Specie* Transfers during the financial year of the Fund, reflecting details of the securities delivered to the Fund and the value assigned to such securities, for five years after the end of the financial year with the most recent two years in a reasonably accessible place; and
24. Neither the Filer nor any affiliate of the Filer receives any compensation in respect of any sale of Fund Securities. The only charge paid by the Fund or Managed Account, if any, is a nominal administrative charge levied by the custodian for recording the trade and any commission charged by the dealer executing the trade.

"Lynn Tsutsumi"  
Director, Market Regulation  
Alberta Securities Commission

**B.3.2 Tralucet Asset Management Inc.**

**Headnote**

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from sections 15.3(2), 15.3(4)(c), 15.6(1)(a)(i), 15.6(1)(d), 15.8(2)(a.1) and 15.8(3)(a.1) and 15.1.1 of National Instrument 81-102 Investment Funds to permit a new prospectus qualified alternative mutual fund that has not distributed securities under a simplified prospectus in a jurisdiction for 12 consecutive months to include in its sales communications past performance data relating to a period when the fund's securities were previously distributed to investors on a prospectus-exempt basis and to use this past performance data to calculate its investment risk level in accordance with Appendix F Investment Risk Classification Methodology – New alternative mutual fund having the same investment objectives and fee structure as for a period when its securities were offered on a prospectus-exempt basis;

Relief granted from section 2.1 of National Instrument 81-101 Mutual Fund Prospectus Disclosure for the purposes of the relief requested from Form 81-101F1 Contents of Simplified Prospectus and Form 81-101F3 Contents of Fund Facts Document, section 3B.2 of National Instrument 41-101 General Prospectus Requirements for the purposes of the relief requested from Form 41-101 Information Required in an ETF Facts Document, Item 10(b) of Part B of Form 81-101F1 Contents of Simplified Prospectus to permit the new alternative mutual fund to use the past performance data for a period when its securities were offered on a prospectus-exempt basis to calculate its investment risk rating in its simplified prospectus, Item 5 of Part I of Form 81-101F3 Contents of Fund Facts Document to permit the alternative mutual fund to include in its fund facts document past performance data for a period when the fund was offered on a prospectus-exempt basis, and Item 5 of Part I of Form 41-101F4 Information Required in an ETF Facts Document to permit the alternative mutual fund to include in its ETF facts document past performance data for a period when the fund was offered on a prospectus-exempt basis;

Relief granted from section 4.4 of National Instrument 81-106 Investment Fund Continuous Disclosure for the purposes of the relief requested from Items 3.1(7), 4.1(1), 4.1(2), 4.2(1), 4.3(1) and 4.3(2) of Part B of Form 81-106F1, and Items 3(1) and 4 of Part C of Form 81-106F1 Contents of Annual and Interim Management Report of Fund Performance, to permit the new alternative mutual to include in its annual and interim management reports of fund performance the past performance and financial data relating to a period when the fund was previously offered on a prospectus-exempt basis.

**Applicable Legislative Provisions**

National Instrument 81-102 Investment Funds, ss. 15.3(2), 15.3(4)(c), 15.6(1)(a)(i), 15.6(1)(d), 15.8(2)(a.1), 15.8(3)(a.1), 15.1.1 and 19.1.  
National Instrument 81-101 Mutual Fund Prospectus Disclosure, ss. 2.1 and 6.1.  
National Instrument 41-101 General Prospectus Requirements, s. 3B.2.  
Item 10(b) of Part B of Form 81-101F1 Contents of Simplified Prospectus.  
Item 5 of Part I of Form 81-101F3 Contents of Fund Facts Document.  
Item 5 of Part I of Form 41-101F4 Information Required in an ETF Facts Document.  
National Instrument 81-106 Investment Fund Continuous Disclosure, ss. 4.4 and 17.1.  
Items 3.1(7), 4.1(1), 4.1(2), 4.2(1), 4.3(1) and 4.3(2) of Part B and Items 3(1) and 4 of Part C of Form 81-106F1 Contents of Annual and Interim Management Report of Fund Performance.

**August 3, 2023**

**IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
ONTARIO  
(the Jurisdiction)**

**AND**

**IN THE MATTER OF  
THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS  
IN MULTIPLE JURISDICTIONS**

**AND**

**IN THE MATTER OF  
TRALUCENT ASSET MANAGEMENT INC.  
(the Filer)**

**DECISION**

**Background**

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Tralucet Global Alt (Long/Short) Equity Fund (the **Fund**) for a decision under the securities legislation of the Jurisdiction (the **Legislation**) exempting the Fund from:

- (a) Subsection 15.3(2), paragraph 15.3(4)(c), subparagraph 15.6(1)(a)(i), and paragraphs 15.6(1)(d), 15.8(2)(a.1) and 15.8(3)(a.1) of National Instrument 81-102 *Investment Funds (NI 81-102)*, to permit the Fund to include its past performance data in sales communications notwithstanding that:
  - (i) the past performance data will relate to a period prior to the Fund offering its units under a simplified prospectus; and
  - (ii) the Fund has not distributed its securities under a simplified prospectus for 12 months  
(collectively, the **past performance data**);
- (b) Paragraph 15.1.1(a) of NI 81-102 and Items 2 and 4 of Appendix F Investment Risk Classification Methodology to NI 81-102 (the **Risk Classification Methodology**) to permit the Fund to include its past performance data in determining its investment risk level in accordance with the Risk Classification Methodology;
- (c) Paragraph 15.1.1(b) of NI 81-102, Item 4(2)(a) and Instruction (1) of Item 4 of Form 81-101F3 *Contents of Fund Facts Document (Form 81-101F3)* and Item 4(2)(a) and the Instruction of Item 4 of Form 41-101F4 *Information Required in an ETF Facts Document (Form 41-101F4)* to permit the Fund to disclose its investment risk level as determined by including its past performance data in accordance with the Risk Classification Methodology;
- (d) Item 10(b) of Part B of Form 81-101F1 *Contents of Simplified Prospectus (Form 81-101F1)*, to permit the Fund to use its past performance data to calculate its investment risk rating in its simplified prospectus;
- (e) Section 2.1 of National Instrument 81-101 *Mutual Fund Prospectus Disclosure (NI 81-101)* for the purposes of the relief requested from Form 81-101F1 and Form 81-101F3, and section 3B.2 of National Instrument 41-101 *General Prospectus Requirements (NI 41-101)* for the purposes of the relief requested from Form 41-101F4;
- (f) Items 5(2), 5(3) and 5(4) and Instruction (1) of Part I of Form 81-101F3 and items 5(3), 5(4) and 5(5) and Instruction (1) of Part I of Form 41-101F4 in respect of the requirement to comply with subsection 15.3(2), paragraph 15.3(4)(c), subparagraph 15.6(1)(a)(i), and paragraphs 15.6(1)(d), 15.8(2)(a.1) and 15.8(3)(a.1) of NI 81-102 to permit the Fund to include in its fund facts documents and ETF facts document the past performance data of the Fund notwithstanding that such performance data relates to a period prior to the Fund offering its units under a simplified prospectus and that the Fund has not distributed its units under a simplified prospectus for 12 consecutive months, including allowing the Fund to use the actual performance data of its Class A units as the past performance data of the Class F units of the Fund until the Class F units of the Fund were issued, and to use such actual past performance data as the past performance data of the Class E units;
- (g) Section 4.4 of National Instrument 81-106 *Investment Fund Continuous Disclosure (NI 81-106)* for the purposes of relief requested herein from Form 81-106F1 *Contents of Annual and Interim Management Report of Fund Performance (Form 81-106F1)*; and
- (h) Items 3.1(7), 4.1(1) in respect of the requirement to comply with subsection 15.3(2) and paragraph 15.3(4)(c) of NI 81-102, items 4.1(2), 4.2(1), 4.3(1) and 4.3(2) of Part B of Form 81-106F1, and Items 3(1) and 4 of Part C of Form 81-106F1 to permit the Fund to include in its annual and interim management reports of fund performance (**MRFP**) the past performance data and financial highlights of the Fund notwithstanding that such performance data and financial highlights relate to a period prior to the Fund offering its units under a simplified prospectus  
(collectively, the **Performance Relief**).

Under National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* (for a passport application):

- (a) the Ontario Securities Commission is the principal regulator; and
- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System (MI 11-102)* is intended to be relied upon in all of the provinces of Canada other than Québec and the Jurisdiction (together with Ontario, the **Jurisdictions**).



### **Interpretation**

Terms defined in MI 11-102, National Instrument 14-101 *Definitions*, NI 41-101, NI 81-101, NI 81-102 and NI 81-106 have the same meaning if used in the decision, unless otherwise defined.

### **Representations**

This decision is based on the following facts represented by the Filer:

#### ***The Filer***

1. The Filer is a corporation formed and organized under the laws of the Jurisdiction. The head office of the Filer is located in Toronto, Ontario.
2. The Filer is registered as a portfolio manager, investment fund manager and exempt market dealer in the Jurisdiction, and as a portfolio manager and exempt market dealer in New Brunswick, Québec, Alberta and British Columbia.
3. The Filer is not a reporting issuer in any of the Jurisdictions and is not in default of securities legislation of any of the Jurisdictions.
4. The Filer is also the investment fund manager and portfolio manager of the Fund.

#### ***The Fund***

5. The Fund is an open-ended mutual fund trust, governed by the laws of the Jurisdiction.
6. The Filer established the Fund on March 31, 2020 (the **Initial Effective Date**). Since the commencement of operations of the Fund, the units of the Fund, have been distributed to qualified investors by means of the prospectus exemptions in National Instrument 45-106 *Prospectus Exemptions* on a private placement basis.
7. The Fund currently consists of four classes of units:
  - a. the Class A units, the Class M units and the Class I units, which were first offered for sale on the Initial Effective Date; and
  - b. the Class F units which were first offered for sale effective September 9, 2021 (the **Class F Effective Date** and together with the Initial Effective Date, the **Effective Dates**).
8. Class I units of the Fund will be offered on a private exempt basis through an offering memorandum and will not be offered under a simplified prospectus.
9. The Fund is not in default of securities legislation in any of the Jurisdictions.
10. The Filer wishes for the Fund to distribute its units pursuant to a simplified prospectus, fund facts, and ETF facts (the **Disclosure Documents**). To that end, a preliminary simplified prospectus, fund facts and ETF facts dated April 18, 2023 have been filed with the securities regulatory authorities in each of the Jurisdictions. Upon the issuance of a final receipt for the Disclosure Documents of the Fund, the Fund will become a reporting issuer in each of the Jurisdictions. Subject to any exemptions therefrom that have been, or may be, granted by the applicable securities regulatory authorities, the Fund will become subject to the requirements of NI 81-102 that relate to alternative mutual funds and the requirements of NI 81-106 that apply to investment funds that are reporting issuers.
11. The investment objective of the Fund is to seek short and long-term capital growth and to exceed the growth of the MSCI World Index over a five year period by primarily investing on a long-short basis in exchange traded securities. The Fund may use leverage through the use of cash borrowings, short sales and derivatives. If used, the aggregate amount of cash borrowing and the market value of the securities sold short will not exceed 50% of the Fund's net asset value (**NAV**), and the aggregate amount of cash borrowing, the market value of the securities sold short and the notional amount of derivatives used for non-hedging purposes will not exceed 300% of the Fund's NAV.
12. The Fund will be managed on the same basis after it becomes a reporting issuer as it was during the period commencing as of the Initial Effective Date through to before it became a reporting issuer. The investment objective, fees and day-to-day administration will not change when the Fund becomes a reporting issuer.
13. The Fund has complied with the investment restrictions and practices contained in NI 81-102 since inception.
14. The Filer proposes that the actual performance data for the time period between the Initial Effective Date and the Class F Effective Date, which represents the actual performance data for the Class A units of the Fund (the "**Class A**

**Performance Period**) be used as the past performance data of the Class F units of the Fund during such period, adjusted for the difference in management fee between the Class A and Class F units of the Fund. The Filer also proposes that the past performance data of the Class A units during the Class A Performance Period coupled with the past performance data of the Class F units of the Fund, until the Fund becomes a reporting issuer, be used as the past performance data of the Class E units of the Fund, adjusted for the difference in management fee between the Class A and Class E units of the Fund. The only difference in performance between the Class A units and the Class F units and the Class E units of the Fund since the Initial Effective Date would have been due to the different management fees paid by each such class of units of the Fund (the management fees of the Class F units of the Fund are the same as the management fees of the Class E units of the Fund) as all of the expenses of the Fund are common expenses.

15. The Filer proposes to present the Fund's past performance data for the time period commencing as of the Initial Effective Date, including as set out above in paragraph 14, as the performance data of the Class A units, the Class F units, the Class E units and the Class M units of the Fund in the sales communications relating to such classes of units of the Fund. Without the Performance Relief, the sales communications pertaining to the Fund cannot include past performance data of the Fund that relates to a period prior to the Fund becoming a reporting issuer, and the Fund cannot provide past performance data in its sales communications until it has distributed securities under a simplified prospectus for at least 12 consecutive months.
16. The Filer proposes to use the Fund's past performance data for the time period commencing as of the Initial Effective Date to determine the investment risk level of the Class A units, the Class F units, the Class E units and the Class M units of the Fund, and to disclose that investment risk level in its Disclosure Documents for each such class of units of the Fund. Without the Performance Relief, the Filer, in determining and disclosing the Fund's investment risk level in its Disclosure Documents for each such class of units of the Fund, cannot use the past performance data of the Fund that relates to a period prior to the Fund becoming a reporting issuer.
17. The Filer proposes to include in the fund facts and ETF facts documents for each class of units of the Fund, as applicable, the past performance data for the time period commencing as of the Initial Effective Date in the charts required by items 5(2), 5(3) and 5(4) of Form 81-101F3, and items 5(3), 5(4) and 5(5) of Form 41-101F4, under the sub-headings "Year-by-year returns", "Best and worst 3-month returns" and "Average return", respectively, related to the periods prior to the Fund becoming a reporting issuer in each of the Jurisdictions. Without the Performance Relief, the fund facts and ETF facts documents of the Fund cannot include past performance data of the Fund that relates to a period prior to the Fund becoming a reporting issuer.
18. As a reporting issuer, the Fund is required under NI 81-106 to prepare and send MRFPs to all holders of its securities on an annual and interim basis. Without the Performance Relief, the MRFPs of the Fund cannot include financial highlights and the past performance data of the Fund that relates to a period prior to the Fund becoming a reporting issuer.
19. The past performance data and other financial data of the Fund for the time period commencing as of the Initial Effective Date, and adjusted for the different management fees of the Class F units and Class E units of the Fund as set out above, and before the Fund became a reporting issuer is significant and meaningful information for existing and prospective investors of units of the Fund.

**Decision**

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Performance Relief is granted provided that:

- (a) Any sales communication, fund facts documents and MRFP that contains past performance data of the units of the Fund relating to a period of time prior to when the Fund was a reporting issuer discloses that:
  - (i) the Fund was not a reporting issuer during such period;
  - (ii) the expenses of the Fund would have been higher during such period had the Fund been subject to the additional regulatory requirements applicable to a reporting issuer;
  - (iii) the Filer obtained exemptive relief on behalf of the Fund to permit the disclosure of past performance data of the units of the Fund relating to a period prior to when the Fund was a reporting issuer; and
  - (iv) with respect to any MRFP, the financial statements of the Fund for such period are posted on the Filer's website and are available to investors upon request; and
- (b) The Filer posts the financial statements of the Fund since the Effective Dates on the Fund's designated website and delivers those financial statements to investors upon request.

### **B.3: Reasons and Decisions**

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“Darren McKall”  
Manager, Investment Funds and Structured Products  
Ontario Securities Commission

Application File # 2023/0242  
SEDAR Project # 3542415

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## B.4 Cease Trading Orders

### B.4.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Revoke
THERE IS NOTHING TO REPORT THIS WEEK.				

### Failure to File Cease Trade Orders

Company Name	Date of Order	Date of Revocation
WesCan Energy Corp.	August 8, 2023	August 15, 2023
Aleafia Health Inc.	August 18, 2023	
Western Copper and Gold Corporation	August 18, 2023	August 21, 2023

### B.4.2 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order	Date of Lapse
THERE IS NOTHING TO REPORT THIS WEEK.		

### B.4.3 Outstanding Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Expire	Date of Issuer Temporary Order
Performance Sports Group Ltd.	19 October 2016	31 October 2016	31 October 2016		

Company Name	Date of Order	Date of Lapse
Agrios Global Holdings Ltd.	September 17, 2020	
Sproutly Canada, Inc.	June 30, 2022	
iMining Technologies Inc.	September 30, 2022	
Alkaline Fuel Cell Power Corp.	April 4, 2023	
mCloud Technologies Corp.	April 5, 2023	
Element Nutritional Sciences Inc.	May 2, 2023	
CareSpan Health, Inc.	May 5, 2023	
Canada Silver Cobalt Works Inc.	May 5, 2023	
FenixOro Gold Corp.	July 5, 2023	
Minnova Corp.	August 02, 2023	

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## **B.7 Insider Reporting**

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This chapter is available in the print version of the OSC Bulletin, as well as in Thomson Reuters Canada's internet service SecuritiesSource (see [www.westlawnextcanada.com](http://www.westlawnextcanada.com)).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website ([www.sedi.ca](http://www.sedi.ca)).





## B.9 IPOs, New Issues and Secondary Financings

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### INVESTMENT FUNDS

**Issuer Name:**

Manulife Multifactor Canadian Large Cap Index ETF  
Manulife Multifactor Canadian SMID Cap Index ETF  
Manulife Multifactor Developed International Index ETF  
Manulife Multifactor Emerging Markets Index ETF  
Manulife Multifactor U.S. Large Cap Index ETF  
Manulife Multifactor U.S. Mid Cap Index ETF  
Manulife Multifactor U.S. Small Cap Index ETF  
Principal Regulator – Ontario

**Type and Date:**

Final Long Form Prospectus dated Aug 18, 2023  
NP 11-202 Final Receipt dated Aug 18, 2023

**Offering Price and Description:**

-

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

Filing #03548110

---

**Issuer Name:**

Ninepoint 2023 Short Duration Flow-Through Limited  
Partnership  
Principal Regulator – Ontario

**Type and Date:**

Preliminary Long Form Prospectus dated Aug 15, 2023  
NP 11-202 Preliminary Receipt dated Aug 16, 2023

**Offering Price and Description:**

-

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

Filing #06010405

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**Issuer Name:**

First Trust Cboe Vest Fund of Buffer ETFs (Canada) ETF  
First Trust Cboe Vest U.S. Equity Buffer ETF - August  
First Trust Cboe Vest U.S. Equity Buffer ETF - February  
First Trust Cboe Vest U.S. Equity Buffer ETF - May  
First Trust Cboe Vest U.S. Equity Buffer ETF - November  
Principal Regulator – Ontario

**Type and Date:**

Final Long Form Prospectus dated Aug 18, 2023  
NP 11-202 Final Receipt dated Aug 21, 2023

**Offering Price and Description:**

-

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

Filing #03560908

**Issuer Name:**

Ninepoint 2023 Short Duration Flow-Through Limited  
Partnership  
Principal Regulator – Ontario

**Type and Date:**

Preliminary Long Form Prospectus dated Aug 16, 2023  
NP 11-202 Preliminary Receipt dated Aug 16, 2023

**Offering Price and Description:**

-

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

Filing #06010405

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**Issuer Name:**

GuardPathTM Managed Decumulation 2042 Fund  
GuardPathTM Modern Tontine 2042 Trust  
Principal Regulator – Ontario

**Type and Date:**

Final Long Form Prospectus dated Aug 17, 2023  
NP 11-202 Final Receipt dated Aug 17, 2023

**Offering Price and Description:**

-

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

Filing #03560186

**Issuer Name:**

Evolve Active Canadian Preferred Share Fund  
Evolve Active Global Fixed Income Fund  
Evolve Automobile Innovation Index Fund  
Evolve Cryptocurrencies ETF  
Evolve Cyber Security Index Fund  
Evolve Future Leadership Fund  
Evolve Global Healthcare Enhanced Yield Fund  
Evolve Metaverse ETF  
Evolve US Banks Enhanced Yield Fund  
High Interest Savings Account Fund  
US High Interest Savings Account Fund  
Principal Regulator – Ontario

**Type and Date:**

Final Long Form Prospectus dated Aug 16, 2023  
NP 11-202 Final Receipt dated Aug 17, 2023

**Offering Price and Description:**

-

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Filing #03560449**

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**Issuer Name:**

Maxam Arbitrage Fund  
Maxam Diversified Strategies Fund  
Principal Regulator – British Columbia

**Type and Date:**

Final Simplified Prospectuses dated Aug 15, 2023  
NP 11-202 Final Receipt dated Aug 15, 2023

**Offering Price and Description:**

-

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Filing #03553657**

---

**Issuer Name:**

TD U.S. Blue Chip Equity Fund  
Principal Regulator – Ontario

**Type and Date:**

Amendment #2 to Final Simplified Prospectus dated August 18, 2023  
NP 11-202 Final Receipt dated Aug 21, 2023

**Offering Price and Description:**

-

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Filing #03550480**

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**Issuer Name:**

Fidelity All-in-One Balanced ETF Fund  
Fidelity All-in-One Conservative ETF Fund  
Fidelity All-in-One Equity ETF Fund  
Fidelity All-in-One Growth ETF Fund  
Principal Regulator – Ontario  
Type and Date  
Amendment #2 to Amended and Restated Simplified Prospectuses dated August 10, 2023  
NP 11-202 Final Receipt dated Aug 18, 2023

**Type and Date:**

Preliminary Shelf Prospectus (NI 44-102) dated August 11, 2022

NP 11-202 Preliminary Receipt dated August 12, 2022

**Offering Price and Description:**

-

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Filing #03441949**

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**Issuer Name:**

iShares ESG MSCI Canada Leaders Index ETF  
iShares ESG MSCI EAFE Leaders Index ETF  
iShares ESG MSCI USA Leaders Index ETF  
iShares MSCI Multifactor Canada Index ETF  
iShares MSCI Multifactor EAFE Index ETF  
iShares MSCI Multifactor EAFE Index ETF (CAD-Hedged)  
iShares MSCI Multifactor USA Index ETF  
iShares MSCI Multifactor USA Index ETF (CAD-Hedged)  
Principal Regulator – Ontario

**Type and Date:**

Amendment #1 to Final Long Form Prospectus dated August 11, 2023

NP 11-202 Final Receipt dated Aug 16, 2023

**Offering Price and Description:**

-

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Filing #03538172**

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**B.9: IPOs, New Issues and Secondary Financings**

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**Issuer Name:**

NEI Canadian Equity Fund (formerly NEI Northwest Canadian Equity Fund)  
NEI Global Impact Bond Fund  
NEI Global Total Return Bond Fund  
NEI Growth & Income Fund (formerly NEI Northwest Growth and Income Fund)  
Principal Regulator – Ontario

**Type and Date:**

Amendment #1 to Final Simplified Prospectuses dated August 17, 2023  
NP 11-202 Final Receipt dated Aug 21, 2023

**Offering Price and Description:**

-

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Filing #**03542709

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**Issuer Name:**

Sun Life Core Advantage Credit Private Pool  
Sun Life Nuveen Flexible Income Fund  
Sun Life Schroder Global Mid Cap Fund  
Sun Life Schroder Emerging Markets Fund  
Sun Life Wellington Opportunistic Fixed Income Private Pool  
Principal Regulator - Ontario

**Type and Date:**

Amendment #1 to Final Simplified Prospectuses dated August 10, 2023  
NP 11-202 Final Receipt dated Aug 21, 2023

**Offering Price and Description:**

-

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Filing #** 03531278

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**NON-INVESTMENT FUNDS**

**Issuer Name**

MCAN Financial Group  
MCAN Mortgage Corporation (d/b/a/ MCAN Financial Group)

Principal Regulator – Ontario

**Type and Date**

Final Shelf Prospectus dated Aug 14, 2023  
NP 11-202 Final Receipt dated Aug 14, 2023

**Offering Price and Description:**

Common Shares, Preferred Shares, Debt Securities, Subscription Receipts, Warrants, Units

**Filing #** 06009436

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**Issuer Name**

Spirit Banner IV Capital Corp.  
Principal Regulator – Ontario

**Type and Date**

Preliminary CPC PROSPECTUS dated Aug 14, 2023  
NP 11-202 Preliminary Receipt dated Aug 17, 2023

**Offering Price and Description:**

Minimum Offering: \$200,000.00 (2,000,000 common shares)

Maximum Offering: \$500,000.00 (5,000,000 common shares)

Price: \$0.10 per Offered Share

**Filing #** 06011334

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**Issuer Name**

First Quantum Minerals Ltd  
Principal Regulator – Ontario

**Type and Date**

Final Shelf Prospectus dated Aug 18, 2023  
NP 11-202 Final Receipt dated Aug 18, 2023

**Offering Price and Description:**

Common Shares, Preferred Shares, Debt Securities, Subscription Receipts, Warrants, Units

**Filing #** 06011822

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**Issuer Name**

Rogers Sugar Inc.  
Principal Regulator – British Columbia

**Type and Date**

Final Shelf Prospectus dated Aug 14, 2023  
NP 11-202 Final Receipt dated Aug 14, 2023

**Offering Price and Description:**

Common Shares, Unsecured Convertible Debentures

**Filing #** 06009619

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**Issuer Name**

Cybin Inc.  
Principal Regulator – Ontario

**Type and Date**

Final Shelf Prospectus dated Aug 17, 2023  
NP 11-202 Final Receipt dated Aug 17, 2023

**Offering Price and Description:**

\$160,000,000.00 - Common Shares, Warrants, Units, Debt Securities, Subscription Receipts

**Filing #** 03550875

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## B.10 Registrations

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### B.10.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Obsido Alternative Investments Inc.	Investment Fund Manager, Portfolio Manager, Exempt Market Dealer	August 16, 2023

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# Index

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<b>Agrios Global Holdings Ltd.</b>		<b>Minnova Corp.</b>	
Cease Trading Order .....	6921	Cease Trading Order.....	6921
<b>Aleafia Health Inc.</b>		<b>Obsiido Alternative Investments Inc.</b>	
Cease Trading Order .....	6921	New Registration .....	7019
<b>Alkaline Fuel Cell Power Corp.</b>		<b>Pender Global Focused Fund</b>	
Cease Trading Order .....	6921	Order .....	6909
<b>Bistricer, Marc Judah</b>		<b>Pender Strategic Growth and Income Fund</b>	
Notice from the Governance & Tribunal		Order .....	6909
Secretariat.....	6905	<b>PenderFund Capital Management Ltd.</b>	
Capital Markets Tribunal Order .....	6907	Order .....	6909
<b>Brownstone Asset Management Inc.</b>		<b>Performance Sports Group Ltd.</b>	
Decision .....	6911	Cease Trading Order.....	6921
<b>Canada Silver Cobalt Works Inc.</b>		<b>Saline Investments Ltd.</b>	
Cease Trading Order .....	6921	Notice from the Governance & Tribunal	
<b>CareSpan Health, Inc.</b>		Secretariat.....	6905
Cease Trading Order .....	6921	Capital Markets Tribunal Order .....	6907
<b>CIM International Group Inc.</b>		<b>Sproutly Canada, Inc.</b>	
Notice from the Governance & Tribunal		Cease Trading Order.....	6921
Secretariat.....	6905	<b>Tralucent Asset Management Inc.</b>	
<b>Cormark Securities Inc.</b>		Decision.....	6915
Notice from the Governance & Tribunal		<b>WesCan Energy Corp.</b>	
Secretariat.....	6905	Cease Trading Order.....	6921
Capital Markets Tribunal Order .....	6907	<b>Western Copper and Gold Corporation</b>	
<b>Element Nutritional Sciences Inc.</b>		Cease Trading Order.....	6921
Cease Trading Order .....	6921		
<b>Feng, Jiubin</b>			
Notice from the Governance & Tribunal			
Secretariat.....	6905		
<b>FenixOro Gold Corp.</b>			
Cease Trading Order .....	6921		
<b>iMining Technologies Inc.</b>			
Cease Trading Order .....	6921		
<b>Kennedy, William Jeffrey</b>			
Notice from the Governance & Tribunal			
Secretariat.....	6905		
Capital Markets Tribunal Order .....	6907		
<b>mCloud Technologies Corp.</b>			
Cease Trading Order .....	6921		

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